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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **CRL.REV.P. 848/2015**

STATE (GOVT OF NCT OF DELHI)

.....Revisionist

Through: Ms. Priyanka Dalal, APP for the State
with Insp. Dinesh Chandra, PS
Khajuri Khas

versus

WARISH

.....Respondent

Through: None

CORAM:

HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

ORDER

31.01.2025

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1. The instant revision petition under Section 397 read with Section 401 of the Code of Criminal Procedure, 1973 (hereinafter “CrPC”) has been filed on behalf of the revisionist seeking setting aside of the order dated 7th October, 2015 (hereinafter “impugned order”) passed by the learned Additional Sessions Judge-North East, Karkardooma Courts, Delhi (hereinafter “ASJ”) in SC No. 27(I)/15, whereby the respondent/accused was discharged from the charges punishable under Sections 308/34 of the Indian Penal Code, 1860 (hereinafter “IPC”).

2. The brief facts of the case are that on 3rd November, 2013 at around 12 noon, the respondent escorted his brother JCL W (name withheld) to assault the complainant’s husband, Jalaluddin, and pursuant thereto, JCL W physically assaulted him. When the complainant, namely Samina, intervened to save her husband, the respondent took a stick from the hand of

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JCL W and hit the same on the head of the complainant, which led to the registration of the FIR No.607/2013, at Police Station - Khajuri Khas, for the offences punishable under Sections 308/34 of the Indian Penal Code, 1860 (hereinafter “IPC”) against the respondent.

3. Subsequently, after conducting the investigation, chargesheet was filed against the respondent under Section 308/34 of the IPC. Thereafter, *vide* impugned order dated 7th October, 2015, the respondent was discharged under Section 308/34 of the IPC. Aggrieved by the same, the instant revision petition has been filed by the revisionist.

4. Learned APP appearing on behalf of the revisionist/State submitted that as per the MLC, the complainant suffered a 3.5 cm x 2 cm wound on her scalp due to the blow given by the respondent.

5. It is submitted that after the said incident took place, the respondent/accused and JCL W were apprehended by the public and the concerned officials seized the stick which was allegedly used for causing injury to the complainant.

6. It is submitted that after completion of the investigation, the police filed charge-sheet against the respondent/accused for the offences punishable under Sections 308/34 of the IPC.

7. It is submitted that while discharging the accused from the said charges *vide* impugned order dated 7th October, 2015, the learned Trial Court did not appreciate the evidence collected by the investigating agency during the course of investigation.

8. It is submitted that the impugned order dated 7th October, 2015 has been passed by the learned Trial Court without proper appreciation of the facts and circumstances of the case and the same is contrary to the



applicable provisions of law.

9. In view of the foregoing submissions, it is prayed that the impugned order may be set aside.

10. None has appeared on behalf of the respondent. However, reply to the instant revision petition has been placed on record.

11. This Court has perused the reply filed by the respondent/accused wherein it is stated that the respondent is innocent and has been falsely implicated in the present case.

12. It is stated that as per the MLC of the complainant, the injuries sustained by the complainant are simple in nature. It is further stated in the reply that after taking into consideration the injuries sustained by the complainant, evidence collected by the investigating agency and other material placed on record, the learned Trial Court discharged the respondent/accused.

13. It is stated that there is no error in the impugned order and there is clear application of mind by the learned Trial Court while passing the impugned order dated 7th October, 2015.

14. In view of the foregoing contents of the reply, it is prayed that instant revision petition may be dismissed.

15. Heard learned APP for the State and perused the material placed on record.

16. At this stage, it is important to refer to the relevant observations made by the learned ASJ in the impugned order dated 7th October, 2015 which read as under:

“18. In the present case, the complainant Samina and the accused Warish are neighbours. The house of the accused



Warish situated adjacent to the house of the complainant Samina. There was no previous enmity or hostility between them. The accused Warish and his brother JCL W came in the street without any weapon or object. They were giving abuses. It is not clear as to whom they were abusing. At that time, the complainant Samina was preparing meal on the first floor of her house. They did not enter forcibly into her house. The complainant Samina came down. Her husband Jalaluddin asked accused Warish and JCL W as to why they were abusing. At that time, the accused JCL W brought a danda from his house and started beating Jalaluddin. There is no MLC of Jalaludin. It appears that he did not sustain any injury. The complainant Samina intervened and the accused Warish hit danda on her head. It is not a case of repeated strikes. The complainant Samina was hit once with the danda. She sustained a wound measuring 3.5 cm x 2 cm on scalp.

19. The complainant Samina was discharged immediately after dressing. She was conscious The nature of the injury was simple, it is evident that the injury sustained by the complainant Samina was not sufficient cause death in ordinary course of nature. The accused Warish was not armed with any deadly weapon. Only a single blow of danda was given. No serious injury was caused on any vital part of the body. The injury was not caused with the intention to cause death. Presence of a superficial injury on the scalp is not sufficient to attract Section 308 IPC. It was a simple case of scuffle/quarrel. The accused Warish could only be proceeded under section 323 IPC.”

17. Before advertng to the merits of the present case, it is imperative to discuss the scope of application of Section 308 of the IPC, which reads as under:

“308. Attempt to commit culpable homicide.—Whoever does any act with such intention or knowledge and under such circumstances that, if he by that act caused death, he would be guilty of culpable homicide not amounting to murder, shall be



punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both; and, if hurt is caused to any person by such act, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.”

18. In order to proceed under Section 308 of the IPC, it is not essential that the injury actually caused to the victim should be sufficient under ordinary circumstances to cause the death of the person assaulted. What the Court has to determine is whether the act, irrespective of its ultimate consequence, was committed with the intention or knowledge and under such circumstances that if one by that act caused death, he would be guilty of culpable homicide not amounting to murder. If an accused does not have the intention to cause death or any bodily injury, which he knows is likely to cause death or even to cause such bodily injury as is sufficient in the ordinary course of nature to cause death, Section 308 of the IPC would not apply.

19. Whether the accused had the intention to cause death or knew in the circumstances that his act was going to cause death depends upon the facts and circumstances of each case. Some of the factors which may be considered in evaluating whether in a particular case, the accused can be proceeded against under Section 308 of the IPC are the intention exhibited by the accused person at the time of the act, the motive behind the commission of said act, nature of the weapon used, the nature and size of the injuries caused to the victim, the parts of the body of the victim where the injuries are caused, severity of the blow or blows and the conduct of the accused.



20. In the present case, the MLC of the complainant clearly mentions that the injuries sustained by her were simple in nature. The weapon used by the respondent was a stick, which was not perilous in nature so as to pose a threat to the life of the complainant.

21. Further, the respondent did not hurl multiple blows using his stick on the complainant and he hit her only once using the said stick, and the same cannot be said to be a severe blow to the complainant, which is clearly evident from the fact that the injuries received by the complainant were simple in nature.

22. In view of the above facts and circumstances, this Court is of the view that there is no *prima facie* case made out against the respondent for the commission of the offence under Section 308 of the IPC as it cannot be said that the respondent's act was committed with intention to cause death or any bodily injury, which he knew was likely to cause death or even to cause such bodily injury as would have been sufficient in the ordinary course of nature to cause death.

23. Upon perusal of the impugned order, the chargesheet filed by the investigating agency, the MLC of the complainant, the Trial Court record and other material placed on record, this Court is of the opinion that the observations of the learned ASJ in the impugned order dated 7th October, 2015, as quoted above, have been correctly made.

24. In view of above discussion, this Court does not find any reason to interfere with the impugned order dated 7th October, 2015 passed by the learned ASJ in SC No. 27(I)/15 as there is no illegality or infirmity in the said order.

25. Accordingly, the impugned order is upheld and the instant revision



petition along with pending applications, if any, stands dismissed.

CHANDRA DHARI SINGH, J

JANUARY 31, 2025

Rt/st/mk

Click here to check corrigendum, if any

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